

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

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Ariel Leon,

Plaintiff,

v.

Wynn Las Vegas, LLC,

Defendant.

Case No. 2:24-cv-00714-ART-BNW

**REPORT AND RECOMMENDATION**

On February 5, 2025, the Court dismissed Plaintiff's complaint without prejudice and with leave to amend by March 10, 2025. ECF No. 22. After that deadline passed and Plaintiff had not filed an amended complaint, this Court entered a minute order giving Plaintiff "one last chance" to comply. ECF No. 24. It warned that if Plaintiff did not file an amended complaint by May 6, 2025, this Court will likely recommend that the case be dismissed. *Id.* Plaintiff neither filed an amended complaint by that deadline nor moved for an extension of time to do so. As a result, this Court recommends that the case be dismissed without prejudice and closed.

The law permits a district court to dismiss an action based on a party's failure to prosecute his case or comply with a court order. *See Hells Canyon Preservation Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (recognizing that courts may dismiss an action pursuant to Federal Rule of Civil Procedure 41(b) sua sponte for a plaintiff's failure to prosecute or comply with the rules of civil procedure or the court's orders); *see also Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint). In determining whether to dismiss an action, the court must consider: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives. *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

1           The first two factors, the public’s interest in expeditiously resolving this litigation and the  
2 court’s interest in managing its docket, weigh in favor of dismissal of Plaintiff’s claims. The  
3 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a  
4 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading  
5 ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th  
6 Cir. 1976). The fourth factor—the public policy favoring disposition of cases on their merits—  
7 weighs against dismissal.

8           The fifth factor requires the court to consider whether less drastic alternatives can be used  
9 to correct the party’s failure that brought about the court’s need to consider dismissal. Courts  
10 “need not exhaust every sanction short of dismissal before finally dismissing a case, but must  
11 explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th  
12 Cir. 1986). Because this action cannot proceed without an operative complaint, the only  
13 alternative is to enter a third order setting another deadline. The circumstances here do not  
14 indicate that Plaintiff needs additional time nor is there evidence that he did not receive the  
15 Court’s orders. Setting another deadline is not a meaningful alternative given these  
16 circumstances. So, the fifth factor favors dismissal.

17           In balance, the factors above favor a recommendation of dismissal. *See Hernandez v. City*  
18 *of El Monte*, 138 F.3d 393 (9th Cir. 1998) (holdings dismissal is proper where least four factors  
19 support dismissal or where at least three factors “strongly” support dismissal).

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